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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

PETER DELVECCHIA, *et al.*,

Plaintiffs,

v.

FRONTIER AIRLINES, INC., *et al.*,

Defendants.

Case No: 2:19-CV-01322-KJD-DJA

**NOTICE REGARDING
RULE 35 EXAMINATION**

NOW COME the Defendants, FRONTIER AIRLINES, INC., REX SHUPE, and SCOTT WARREN (“Defendants”), to advise the Court of a violation of a condition placed on the Rule 35 Examination of Plaintiff A.D., a minor:

1) The Defendants retained Dr. Stephanie Holland in the above-captioned case to perform a Rule 35 Examination of the minor Plaintiff A.D.

2) On August 5, 2022, Magistrate Judge Daniel Albregts entered a written Order granting Frontier’s motion to conduct the Rule 35 Exam. The Order placed several conditions on the Exam, one of which was a prohibition against the use of recording devices. ECF No. 195, p. 8.

1 3) On February 13, 2023, United States District Judge Kent J. Dawson entered a written
2 Order denying Plaintiffs' Rule 72(a) Objection to Magistrate Judge Albregts' ruling. ECF No. 231.

3 4) Defendants' counsel sent several materials to Dr. Holland to aid in her preparation for
4 the Rule 35 Examination, including copies of the aforementioned Orders. Defendants' counsel also
5 discussed with Dr. Holland the conditions imposed by Magistrate Judge Albregts, and understood that
6 Dr. Holland was aware of the prohibition against recording devices.
7

8 5) Dr. Holland was originally scheduled to examine A.D. on June 28, 2023, but her flight
9 from Las Vegas, Nevada to Raliegh-Durham, North Carolina was cancelled, and the exam was
10 rescheduled for July 25, 2023.
11

12 6) Shortly after A.D.'s Rule 35 Exam on July 25, 2023, Plaintiffs' counsel advised Counsel
13 for Defendants that Dr. Holland had recorded portions of the Exam, in violation of Judge Albregts'
14 original ruling.

15 7) Dr. Holland's Affidavit is attached hereto as **Exhibit A**.

16 8) The affidavit of Brian T. Maye, counsel for the Defendants, is attached as **Exhibit B**.

17 9) It appears that Dr. Holland was having a difficult time hearing A.D. during the exam,
18 so she recorded parts of A.D.'s Rule 35 Exam using her cell phone.
19

20 10) Consistent with the statements in the Affidavits of Dr. Holland and Mr. Maye, upon
21 learning of the recordings of A.D.'s Rule 35 Examination, Mr. Maye immediately contacted Dr.
22 Holland and asked her to preserve the recordings.
23

24 11) Counsel for Defendants understands that Dr. Holland has neither listened to the
25 recordings herself nor allowed anyone else to listen to the recordings, including counsel for Defendants.
26
27
28

1 12) Defendants file this Notice out of an abundance of caution to alert the Court to a
2 violation of a Court Order, and state that they will make the aforementioned recordings available for
3 *in camera* review should the Court deem necessary for any reason.
4

5 DATED this 5TH day of September 2023.

Respectfully submitted,

6 /s/ Richard C. Harris

7 Richard C. Harris, Esq. (admitted *pro hac vice*)

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CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2023, I caused the foregoing to be electronically filed with the United States District Court for the District of Nevada using the CM/ECF system.

By: /s/ Richard C. Harris